Dorset County Council

User Guide

Framework for the Supply and Delivery of Civil Engineering, including Timber and Forestry Products

Reference: SWCE-93ZEFT

Issue No.1

1 May 2013 to 30 April 2015

Provision to extend further 2 years

User Guide

Introduction

This User Guide outlines the Framework Agreement in respect of the following:

Supply & Delivery of Civil Engineering and Construction Materials, including Timber and Forestry Products
Reference: SWCE-93ZEFT

Lots

The Framework is split over the following Lots:

Lot 1 – Civil Engineering and Construction Materials
Lot 2 – Timber and Forestry Products

Awarded Contractors (full details on page 3)

In Alphabetical order only

Lot 1

Bradford Building Supplies Ltd	John Davidson (Pipes) Ltd t/a JdP	Keyline Builders Merchants Ltd

Lot 2

Bradford Building Supplies Ltd	Keyline Builders Merchants Ltd

Framework Point of Contact

We have endeavoured to outline basic information within the User Guide however if further details are required or you have a query on any aspect of this agreement then please do contact the lead below.

Contact:
Dawn Adams, Senior Category Manager, Property & FM
Email: d.d.adams@dorsetcc.gov.uk Tel: 01305 221271

Dorset County Council
Dorset Procurement, County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ

Contents

	Page Number
Awarded Contractor's Details	3
Operation of the Framework	4
1. Use of Framework	4
2. Calling Off / Direct Award	4
3. Conducting Further Competition	4
Award Criteria	5
Details of Framework Agreement	5
1. Background	5
2. Scope	5
3. Structure	6
4. Duration	6
5. Potential Contract Bodies / End User Establishments and Geographical Areas	6
6. Classification of End User Organisations	6
7. Pricing Terms for Other Contracting Bodies	6
Specification	7 – 10
Appendix 1 – Call-Off Terms and Conditions	11 – 25
Appendix 2 – User Agreement *(external bodies only)*	26 – 27
Appendix 3 – Feedback Form *(external bodies only)*	28
Notes	29
Appendix 4 – Lot 1 : Price Schedule	[separate document]
Appendix 5 – Lot 2 : Price Schedule	[separate document]

Awarded Contractors' Details

In Alphabetical order below are the local points of contact.

Bradford Building Supplies Ltd Account Lead - Dorchester Branch Units 11/13 Poundbury West Industrial Estate, Dorchester, DT1 2PG **Tel:** 01305 265422 **Point of contact:** Jon Worrall **E-mail:** bbs.dorchester@bradfords.co.uk	**Lot(s):** Lot 1 – Civil Engineering and Construction Materials Lot 2 – Timber and Forestry Products
John Davidson (Pipes) Ltd t/a JdP Account Lead – Broadmayne Branch Chalky Road, Broadmayne, Nr Dorchester, DT2 8EJ **Tel:** 01305 853887 **Point of contact:** Chris Naylor **E-mail:** Dorchester@jdpipes.co.uk	**Lot(s):** Lot 1 – Civil Engineering and Construction Materials
Keyline Builders Merchants Ltd Account Lead- Poole Branch Creekmoor Lane, Poole, Dorset, BH17 7EE **Tel:** 01202 694001 **Point of contact:** Howard Ray / Adams Chaisty **E-mail:** Creekmoor@keyline.co.uk	**Lot(s):** Lot 1 – Civil Engineering and Construction Materials Lot 2 – Timber and Forestry Products

Operation of the Framework

1. Use of Framework

1.1. Contracting Bodies are permitted to use the Framework as below in accordance with Regulation 19 of the Public Contracts Regulations 2006 (and any subsequent amendment or re-enactment thereof)

1.2. Unless specifically advised otherwise, goods and services will be delivered directly to the Contracting Body concerned in accordance with the Specification contained within this Invitation to Tender and Framework Agreement (or the updated Specification contained within a Contracting Body's specific tender document, if the Contracting Body chooses to run further competition).

2. Calling Off / Direct Award

2.1. If a Contracting Body decides to source Goods or Services through the Framework Agreement it may award a Call-Off Contract or Order for Goods in accordance with the terms laid down in the Framework Agreement without reopening competition.

2.2. A Contracting Body may carry out direct award if a comparison is possible between the Contractor's provision, which for this Framework will primarily be in consideration of the rates submitted in the tender received as set out in the Price Schedule and the Contractor has stock availability plus the ability to meet requirements of the Call-Off or Order such as delivery.

2.3. Using this approach, the Contracting Body may not reopen competition under the Framework and should not engage in substantive negotiations with the Contractor.

3. Conducting Further Competition

3.1.1. Where the terms laid down in the Framework Agreement are not precise or complete enough for the particular call-off, further competition will be held with all those Contractors within the Framework Agreement that are capable of meeting the particular requirement.

3.1.2. The basic terms and conditions of the Framework cannot be renegotiated or the specification used in setting up the Framework cannot be substantively changed.

3.1.3. **Price:** A Contracting Body may conduct further competition based on evaluation of 100% price where it is seeking best price from Contractors to meet the particular circumstances of the individual Call-Off or Order, and no element of quality is to be evaluated.

3.1.4. **Price and Quality:** A Contracting Body, when conducting further competition, may at their option vary the % weighting ratios of Price and Quality as part of any further competition if both quality and price is to be evaluated.

3.1.5. The Contracting Body may wish to conduct further competition to reflect particular circumstances for the individual call-off and weight the evaluation / award criteria according to the Contracting Body's requirements.

3.1.6. Examples of possible areas:

- particular delivery timescales;
- particular invoicing arrangements and payment profiles;
- additional security needs;
- incidental charges;
- particular mixes of rates and quality;
- where the terms include a price mechanism;
- individual special terms (e.g. specific to the particular products/services that will be provided to meet a particular requirement under the Framework).

3.2. Tenderers are further advised of the following in respect of further competitions:

3.2.1. A Contracting Body may opt to use electronic methods for running their further competitions, and that evaluation of tenders will be included within electronic process;

3.2.2. Equally, a Contracting Body may opt to use non-electronic methods;

3.2.3. Interview, presentations and/or site visits may be required as part of the process at further competition;

3.2.4. An electronic reverse auction may be conducted as part of the contract award process at further competition stage (even though an e-Auction was not used to appoint Contractors onto the Framework itself)

3.2.5. Whilst further competition is likely to be conducted by an individual Contracting Body, further competition may also be run by a Contracting Body on behalf of a collaboration or group of Contracting Bodies where necessary or desired.

Award Criteria

Submitted tenders were evaluated to find the most suitable Tenderer who can meet the Specification and provide competitiveness of price.

Evaluations were carried out by officers of the Council who followed systematic and comprehensive process in accordance with the Council's procedures, using the following evaluation criteria and weightings:

Price @ 60% Both Lots – Core Products

Quality @ 40% as follows

- Both Lots - Company Questionnaire @ 5%
- Lot 1 Only - Civil and Construction Materials
  - Products, Delivery and Customer Service @ 35%
- Lot 2 Only - Timber and Forestry Products
  - Products, Delivery and Customer Service @ 35%

Details of Framework Agreement

1. Background

1.1. The Council placed a contract notice in the Official Journal of the European Union (OJEU ref 2013/S 022-033927 EN, publication date 31/01/2013) seeking expressions of interest from providers for the supply and delivery of Civil Engineering and Construction Materials, including Timber and Forestry Products under a framework agreement to Council at various delivery locations throughout the County of Dorset and potentially other Contracting Bodies within the South West Region of England.

1.2. On the basis of the Contractor's tender, the Council selected the Contractor to enter into a framework agreement to provide Goods or Services to Contracting Bodies on a call-off basis in accordance with this Framework Agreement.

1.3. This Framework Agreement sets out the award and ordering procedure for goods which may be required by Contracting Bodies, the main terms and conditions for any Call-Off Contract which Contracting Bodies may conclude and the obligations of the Contractor during and after the term of this Framework Agreement.

1.4. In setting up the Framework, the Council is acting as lead authority on behalf of the Contracting Bodies who may access the Framework.

1.5. It is the parties' intention that there will be no obligation for any Contracting Body to award any Orders under this Framework Agreement during its Term.

2. Scope

2.1. The requirements are predominately for the Council's services within the Environment Directorate, mainly Dorset Highways Operations, however it will be available to access by the Council as a whole, including youth centres, schools and academies.

2.2. Access by schools and academies is subject to prior agreement by Dorset Procurement.

2.3. Contractors' ability to work innovatively with the Council in the spirit of partnership to secure efficiencies and savings shall underpin the Framework. This shall include, but not limited to, advising the Council on achieving and maintaining a Core Product list reflective of actual requirements, depot stock control, bulk purchasing, product selection, new products, best practice, etc,.

3. Structure

3.1. The Framework Agreement is split between the following Lots:

3.2. Lot 1 – Civil Engineering and Construction Materials

3.3. Lot 2 – Timber and Forestry Products

4. Duration

4.1. The Framework shall be for an initial period of 2 years (commencing 1 May 2013 and ending 30 April 2015) from the official award of the Agreement, with provision to extend for a further 2 years, subject to satisfactory performance making a total 4 year period. The extension to be as 12 month increments, i.e. 2 + 1 + 1.

4.2. Individual contracts awarded, or Order placed, under the Framework may be of any reasonable duration (regardless of when they commenced, i.e. an individual call-off may outlive the expiry of the Framework itself). The duration of any call-off shall be subject to an individual Contracting Body's own legal guidance.

4.3. Whilst principally for use by the Council, the Framework will also be open for collaboration and access by other public sector bodies within the South West Region of England, subject to prior agreement by the Council. No access shall be given by the Contractor to the Framework without said prior agreement.

4.4. Full details of the classification of potential Contracting Bodies and End User's organisation classification is detailed below:

5. Potential Contracting Bodies / End User Establishments and Geographical Area

5.1. Regions in England: Main Regions South West

See link: http://www.direct.gov.uk/en/Dl1/Directories/Localcouncils/index.htm

6. Classification of End User Organisations

6.1. Local Authority Councils: County, Unitary, District and Borough Councils. (Parish and Community Councils are also permissible users)

6.2. See link: http://www.direct.gov.uk/en/Dl1/Directories/Localcouncils/index.htm

6.3. Educational Establishments: Nursery School, Primary School, Middle or High School, Secondary School, Academy, Special School, Pupil Referral Unit (PRU), Further Education College, University.

See links

http://www.schoolswebdirectory.co.uk/index.php

http://www.ukschoolsdirectory.net/searchresult.php

6.4. Police, Fire & Rescue & Maritime & Coastguard Agency Emergency Services:

See links:

http://www.police-information.co.uk/police-directory/index.php?category=6

http://www.mcga.gov.uk/c4mca/mcga07-home.htm

6.5. NHS Bodies and Ambulance Services:

See link: http://www.nhs.uk/ServiceDirectories/Pages/AcuteTrustListing.aspx

6.6. Central Government Departments & their Agencies:

See link: http://www.direct.gov.uk/en/Dl1/Directories/A-ZOfCentralGovernment/index.htm

6.7. Registered Charities:

See links http://www.charitycommission.gov.uk/About_us/Regulation/Registering_charities_index.aspx

6.8. Registered Social Landlords: Government-funded, not-for-profit organisations that provide affordable housing. They include housing associations, trusts and cooperatives.

See link: http://www.idea.gov.uk/idk/core/page.do?pageId=7175736

7. Pricing Terms for Other Contracting Bodies

7.1. Potential contracting bodies may access the Framework based on the agreed Contractor's Core and Non-Core Pricing Terms plus 1% uplift.

7.2. The 1% provides for the retrospective rebate payable to the Council by the Contractor in respect of sales accrued by other Contracting Bodies.

1. CONTRACTOR'S OBLIGATIONS

1.1 The Contractor shall have regard to all obligations under the Framework Agreement and Call-Off Terms and Conditions.

1.2 The Contractor shall ensure that all employees are aware of these obligations and with particular regard, along with understanding, of the obligations under clause 2 Goods and Services that relate to the operational day to day business of supply and delivery.

1.3 This specification applies equally to the `Council', `Contracting Bodies' or `Contracting Body'.

1.4 Definitions as defined within both the Framework Agreement and the Call-Off Terms.

2. GOODS – GENERAL

2.1 Supply and delivery of civil engineering and construction materials, including timber and forestry products, is required to respond to the needs of the Council for construction, repair and maintenance.

2.2 All Goods supplied shall conform to all relevant British Standards and other appropriate regulations.

3. NEXT DAY DELIVERY SERVICE

3.1 The Contractor shall, where requested to do so, provide a next day delivery for goods ordered before 13:00hrs (1.00pm) on the previous day.

4. STOCK LEVEL AND CONTRACTOR SUPPLY CHAIN

4.1 The Contractor shall ensure that stock of goods, whether at Contractor's own depot or through the Contractor' supply chain, are maintained at a level that it is able to support the framework requirements.

4.2 In partnership with the Council, the Contractor shall manage stock that reflects seasonal requirements to ensure correct levels are maintained.

4.3 The Council shall work closely with the Contractor to forward plan, as much as practical, goods / stock requirements needed to be delivered whether at Council's depot or individual construction site or location.

4.4 The Council and the Contractor shall work closely in achieving optimum use of Council's depots to hold bulk / volume purchased stock and share best practice on stock control, handling, storage etc,.

4.5 The Council shall require linkage into the Contractor's supply chain, whether it is for goods held at Contractor depot or goods held by the Contractor's supply chain partners.

4.6 Stock and supply chain, shall be subject to discussion and agreement at regular review meetings with the Council throughout the period of the Framework to ensure that all opportunities are explored to achieve savings and efficiencies through adequate stock control, selection and purchase.

5. CORE PRODUCT LIST

5.1 Core Products shall be supplied at the prices stated in the Price Schedule and subsequently agreed during the period of the Framework.

5.2 The Contractor and the Council shall maintain a Core Product List throughout the period of the Framework which shall attract preferential pricing. Such products shall be those that are being purchased by the Council on regular basis.

5.3 The Core Product List shall be flexible and shall be subject to review by both the Council and the Contractor at quarterly review meetings to ensure it continues to reflect the Council needs, also provides the opportunity for the Contractor to offer up alternative products, bulk/volume breaks, etc

6. NON-CORE PRODUCTS

6.1 Non-Core Products shall be supplied at the terms agreed in the Price Schedule.

6.2 Non-Core Products shall be products that are not ordered on a regular basis.

6.3 Identification of Non-Core Products shall be flexible and shall be subject by review by both the Council and the Contractor at quarterly review meetings.

6.4 Should the Council's requirements change resulting in a Non-Core Product deemed to be subject to regular purchase then such product shall move to the Core Product List on agreement by both the Council and the Contractor of core pricing.

7. ORDERS

7.1 The Contractor shall not supply goods to the Council without a valid Council order.

7.2 The Council shall not be responsible for the payment of goods supplied without a valid Council order.

8. DELIVERY

8.1 All clauses in relation to delivery of goods shall apply equally to the collection of goods, as appropriate.

8.2 The Contractor shall deliver goods without charge (free of charge) to the Council's depots, construction sites or locations as specified on the order.

8.3 The Contractor, where the incorrect goods have been supplied by the Contractor, shall collect such goods without charge (free of charge). Any charge for the collection of goods, where the wrong goods have been ordered by the Council, shall be as specified in the Price Schedule, if applied.

8.4 The Contractor shall contact the Council should the point of delivery specified on the order is unclear or further clarification of site location is needed. This is of particular importance in respect of construction sites or locations where these may be on the highway or difficult to access or are secure.

8.5 Notification of delivery date and time to be provided by the Contractor to the Council's designated contact as identified at point of order. Some orders may require prior notification to enable the Council, for example, to open a depot to receive goods. The period of notice shall be quoted on the Order by the Council.

8.5.1 If the Order specifies that the Contractor is required to telephone a designated contact prior to delivery, the Contractor shall adhere to this requirement

8.6 The Contractor shall ensure that all goods delivered are signed for by the Council for as goods left without signature may result in non-payment; unless prior agreement by the Council due to no representative available to do so, for example, an identified unmanned depot, construction site or location.

8.7 Any change to any agreed or anticipated delivery date or time shall be notified to the Council as soon as the Contractor is aware that a change is required. An alternative date or time to be agreed by the Council; the Council reserves the right to not accept the change and if necessarily, purchase the goods elsewhere.

8.8 The Contractor shall report to the designated contact as identified at point of order, if one is given.

8.9 All Contractor employees employed by the Contractor for delivery of goods, and all Contractor vehicles used for the delivery of goods under this Framework, shall be compliant with VOSA regulations. This is in particular regard of inspection and maintenance of vehicles and any weight restriction for loads.

8.10 The loading and unloading of goods shall be the responsibility of the Contractor, unless prior agreed by the Council.

8.11 All Contractor vehicles shall be fit for purpose and have the correct loading / unloading equipment fitted.

8.12 Unmanned depots, construction sites or locations may not have any lifting equipment and the Contractor shall provide lifting and/or forklift assistance. The Council shall identify to the Contractor unmanned depots, construction sites or locations within the order.

9. CALL COLLECT / COUNTER COLLECTIONS

9.1 The Council, where necessary and appropriate to do so, shall require the Contractor a `call collect' (pre-ordering of goods) service in respect of all Core Products and what is normal Contractor stock.

9.2 This would be for the collection of goods on Orders received that are marked `call collect' and placed by 13:00hrs (1.00pm) the previous day by the Council.

9.3 The Contractor on receipt of call collect orders shall ensure goods are pre-packed ready for collection by the Council.

9.4 The Contractor shall not release such goods without Council identification that such person is a Council representative and as the Council's authorisation to collect the goods.

9.5 The Contractor shall record the name of the person collecting the goods and their vehicle registration number, such information shall be included in the management reports (Schedule 7 refers).

9.6 The Council shall not be responsible for the payment of goods that have not been collected by a Council representative and/or has authorisation of the Council to do so.

9.7 The Contractor shall only supply the goods that are stated on the `call collect' Order and shall not supply any additional goods without a further valid Council Order. Any additional goods required shall require a separate valid Order and the Council shall not be responsible for the payment of additional goods supplied without a valid Order.

10. ORDER PLACED AT DEPOT AT POINT OF COLLECTION

10.1 The Council, where necessary and appropriate to do so, shall call to the Contractor's depot to select goods and provide an order to the Contractor' this is outside of the `call collect' above.

10.2 The Contractor shall not release goods to the Council without an official formal Council Order.

10.3 The Council shall not be responsible to the payment of goods that have been provided without a valid Council Order.

10.4 The Contractor shall record the name of the person collecting the goods and their vehicle registration number, such information shall be included in the management reports (Schedule 7 refers).

10.5 The Council does not provide authorisation for any Council employee to call at a Contractor depot to collect goods without a valid Order. The Contractor shall respectively decline any request to do so and refer the requestor back to the Contracting Officer.

11. HEALTH AND SAFETY

11.1 The Contractor when delivering goods, whether to a Council depot, construction site or location, shall comply with Personal Protection Equipment (PPE) as specified by the Health and Safety at Work Act and any additional site specific regulations.

11.2 All Contractor vehicles to have the appropriate safety systems, e.g. reversing bleepers, and visibility markings, flashing beacons, etc that are compliant to delivery on to the public highway.

11.3 Health and safety in delivering goods to the Council is paramount. The Contractor shall adhere to any health and safety best practice, Council instruction and current regulations when delivering goods to the Council.

11.4 The Contractor shall be required to co-operate with the Council when required to carry out any risk assessments.

11.5 The Council and the Contractor shall assess delivery and collection risks to mitigate or reduce any identified risk(s). Arrangements for preventing vehicle accidents during deliveries and collections shall be reviewed in consultation with the Council at regular intervals throughout the period of the framework.

12. ENVIRONMENTAL STATUS - TIMBER AND FORESTRY PRODUCTS

12.1 The Contractor shall declare to the Council the environmental status of all timber and forestry products stating whether such products are originating from either:

12.1.1 legal and sustainable source as defined by the Central Point of Expertise on Timber (CPET) – see link http://www.cpet.org.uk, or;

12.1.2 FLEGT-licensed or equivalent creditably certified sources, or;

12.1.3 recycled timber, or;

12.1.4 none of the above, in which case specify status

12.2 The Contractor shall provide details to the Council of source of origin and environmental status of all timber and forestry products.

13. FRAMEWORK MANAGEMENT

13.1 The Contractor shall nominate an account manager and / or a contract manager to work with the Council in the day to day provision of the Framework and its overarching management as a whole.

14. COUNCIL OPERATIONAL DEPOTS

14.1 The following are the operational depots of Dorset Highways Organisation (DHO) which are also utilised by other services within the Council's Environment Directorate, such as Countryside Services:

14.2 Operational Depots (opening hours 07:45 to 16:30hrs Monday to Friday)

- Charminster Depot, Wanchard Lane, Charminster, DT1 9RP
- Ferndown Depot, 1 Nimrod Way, East Dorset Trade park, Wimborne, BH21 7SH
- Gibbs Marsh Depot, Gibbs March Trading Estate, Stalbridge, Sturminster Newton, DT10 2RY

14.3 Unmanned Depots (access via pre-notification of delivery)

- Blandford Depot, Shaftesbury Road, Blandford
- Bridport Depot, Southmill Lane, Bridport, DT6 3PL
- Wareham Depot, Westminster Road Industrial Estate, Wareham, BH20 LS

Appendix 1: Call-Off Terms and Conditions

1. **DEFINITIONS**

1.1 **`Contract'** means the legally binding agreement for the provision of Goods or Services made between a Contracting Body and the Contractor comprising an Order and these clauses;

1.2 **'Commencement Date'** means the date set out in the Order;

1.3 **'Commercially Sensitive Information'** means, if relevant, the information listed in a schedule or order comprised of trade secrets and information provided by the Contractor to the Council in confidence;

1.4 **'Confidential Information'** means any information in this Agreement and of either party which forms the subject matter of patent, copyright, registered design or other protected propriety right, information of the other party designated as "Commercially Sensitive Information" or information which is by its nature clearly confidential;

1.5 **'Contracting Bodies'** or **`Contracting Body'** means the Council or any other contracting bodies identified in the Order;

1.6 **'Contracting Officer'** means the representative of the Contracting Body appointed by the Body to act on its behalf as agent for the purpose of managing the Order;

1.7 **'Contract Price'** means the price (exclusive of any applicable VAT), payable to the Contractor by the Contracting Body as set out in the Order, for the full and proper performance by the Contractor of its obligations under the Contract;

1.8 **'Contractor'** means the person, firm or company with whom the Contracting Body enters into the Contract to supply the Goods or Services as set out in the Order, and shall include the Contractor's employees, personal representatives, successors and permitted assigns;

1.9 **'Default'** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Employees in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;

1.10 **'DPA'** means the Data Protection Act 1998;

1.11 **'Employees'** means all persons employed by the Contractor together with the Contractor's servants, agents, Contractors and sub-contractors used in the performance of its obligations under the Contract;

1.12 **'Equipment'** means the Contractor's equipment, plant and materials used in the performance of its obligations under the Contract;

1.13 **'FOIA'** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time with any guidance and/or codes of practice issued by the Information Commissioner in relation to the legislation;

1.14 **`Force Majeure'** means any event or occurrence which is outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that part, including

fire; flood, violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear; biological or chemical warfare; or any other disaster; natural or man-made, but excluding:

1.14.1 any industrial action occurring within the Contractor's or any sub-contractors organisation;

or

1.14.2 the failure by any sub-contractor to perform its obligations under any sub-contract.

1.15 **'Framework Agreement'** or **`Agreement'** or **`Framework'** means the framework agreement or the supply and delivery of civil engineering and construction materials, including timber and forestry products.

1.16 **'Goods or Services'** means the supply and delivery of Goods or Services to be supplied as specified in the Order. Any reference to Goods shall apply equally to the performance of Services as appropriate unless otherwise stated;

1.17 **'Intellectual Property Rights'** shall mean patents, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

1.18 **`Management Information'** means files, usage records, changing information, and such other management information, as the Contractor is obliged to retain for information for the Contracting Body;

1.19 **'Month'** means calendar month;

1.20 **'Order'** means an order for Goods or Services served by any Contracting Body on the Contractor in accordance with this Framework Agreement;

1.21 **'Party'** means the Contracting Body or the Contractor;

1.22 **'Premises'** or **'Site'** means any location where the Goods or Services are delivered, or the Goods are required to be collected, as set out in the Order;

1.23 **'Prohibited Act'**: the following constitute Prohibited Acts:

1.23.1 to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

1.23.2 induce that person to perform improperly a relevant function or activity; or

1.23.3 reward that person for improper performance of a relevant function or activity;

1.23.4 to directly or indirectly request, agreed to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

1.23.5 committing any offence:

1.23.6 under the Bribery Act

1.23.7 under the legislation creating offences concerning fraudulent acts;

1.23.8 at common law concerning fraudulent acts relating to this Agreement or any other Contract or Agreement with the Council; or

1.23.9 defrauding, attempting to defraud or conspiring to defraud the Council.

1.24 **'Specification'** means the scope of the Goods or Services to be provided as set out in Appendix 2 of the Framework Agreement and in the Order;

1.25 **'Working Days'** means Monday to Friday inclusive but not including any declared public holiday.

2. INTERPRETATION

2.1 The interpretation and construction of the Contractor shall be subject to the following provisions:

2.1.1 Reference to the singular includes the plural and vice versa and references to any gender includes both genders;

2.1.2 The words "include", "includes" and "including" are construed as they were immediately followed by the words "without limitation";

2.1.3 References to any person shall include persons and partnerships, firma and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns and transferees;

2.1.4 The headings in the Contract included for ease of reference only and shall not affect the interpretation or construction of the Contract;

2.1.5 Any periods of time referred to in the Contract and expressed in days shall refer to calendar days unless stated otherwise;

2.1.6 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statue for the time being in force;

2.1.7 Any condition referring to the delivery of Goods shall apply equally to the performance of Services as appropriate unless otherwise stated;

2.1.8 Reference to a clause is a reference to the whole of that clause unless stated otherwise;

3. GENERAL PROVISIONS

3.1 Contractor's Status

3.1.1 At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

3.2 Entire Agreement

3.2.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

3.2.2 In the event of any conflict between the Order, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in the following order of precedence:

a) the Order;

b) the clauses of the Contract; and any other document referred to in the clauses of the Contract

3.3 **Notices**

3.3.1 Any notice to be given under this Contract shall be in writing and shall be hand delivered or sent by first class mail to the address of the Contractor and the Contracting Body at the head of the Contract or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

3.3.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:

a) if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt will be deemed to occur at 9am on the next following Working Day; or

b) if delivered by first class inland mail, two Working Days after the day of posting

3.3.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted.

3.4 **Conflicts of Interest**

3.4.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor its Employees or any servant, agent, Contractor or sub-contractor is placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Contracting Body under the provisions of this Call-Off Contract. The Contractor will disclose to the Contracting Body full particulars of any such conflict of interest which may arise.

4. **SUPPLY OF GOODS OR SERVICES**

4.1 **The Goods or Services**

4.1.1 The Contractor shall supply the Goods or Services in accordance with the Contracting Body's requirements in the Framework Agreement, the Specification, the Order, any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 and all relevant specifications applicable to such including those of the British Standards Institution or European equivalent (or if there be no such specification shall be of the highest standard).

4.1.2 The Contractor acknowledges that the Contracting Body relies on the skill and judgment of the Contractor in the supply of the Goods or Services and the performance of its obligations under the Contract.

4.2 **Delivery**

4.2.1 The Contractor shall deliver the Goods or Services at the time(s) and date(s) specified in the Order and strictly in accordance with the Specification at all times.

4.2.2 The Contractor shall not make delivery of the Goods or Services without the Contracting Body's prior approval.

4.2.3 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods or Services within the time specified by the Contracting Body, the Contracting Body may release itself from any obligation to accept and pay for the Goods or Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Contracting Body.

4.2.4 The Contracting Body shall be under no obligation to accept or pay for any Goods or Services delivered in excess of the quantity ordered. If the Contracting Body elects not to accept such over-delivered Goods or Services it shall give notice in writing to the Contractor to remove them within five Working Days and to refund to the Contracting Body any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Contracting Body may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Contracting Body. The Contracting Body shall be under no obligation to accept or pay for any Goods or Services supplied earlier than the date for delivery stated in the Order.

4.2.5 In delivering the Goods or Services to the Premises the Contractor shall take all reasonable care to avoid injury to persons thereon and damage to property.

4.2.6 The Contractor shall comply with all reasonable security requirements relating to the Premises and shall ensure that all its Employees, agents and sub-contractors shall likewise comply with such requirements.

4.3 **Ownership and Risk**

4.3.1 Ownership and risk in the Goods shall, without prejudice to any other rights or remedies of the Contracting Body, pass to the Contracting Body at the time of acceptance of delivery.

4.3.2 The Contracting Body disclaims all responsibility for the security of Goods delivered and left on the Premises by the Contractor if they should fail to obtain receipt for their acceptance from a person authorised to receive them.

4.3.3 All equipment belonging to the Contractor which is brought onto the Contracting Body's Premises shall be at the Contractor's risk.

4.4 **Non-Delivery**

4.4.1 Where specified by the Contracting Body on dispatch of any consignment of the Goods, the Contractor shall send the Contracting Body an advice note specifying the date of dispatch and the volume of the Goods. Where the Goods, having been placed in transit, fail to be delivered to the Contracting Body on the due date for delivery, the Contracting Body shall, (provided that the Contracting Body has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor free of charge to deliver substitute Goods within the timescales specified by the Contracting Body or terminate the Contract.

4.5 **Rejection**

4.5.1 The Contracting Body may by written notice to the Contractor reject any of the Goods or Services which fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery to the Contracting Body of such Goods or Services. If the Council rejects any of the Goods or Services pursuant to this clause the Contracting Body may (without prejudice to other rights and remedies) either:-

a) have such Goods or Services promptly, and in any event within five (5) Working Days, replaced by the Contractor with Goods or Services which conform in all respects with the Order and due delivery shall not be deemed to have taken place until such replacement has occurred; or

b) treat the Contract as discharged by the Contractor's breach and obtain a refund from the Contractor in respect of the Goods or Services concerned together with payment of any additional expenditure reasonably incurred by the Contracting Body in obtaining other Goods or Services in replacement provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods or Services.

4.5.2 The issue by the Contracting Body of a receipt note for the Goods or Services shall not constitute any acknowledgement of the condition, quantity or nature of those Goods or Services.

4.5.3 Any Goods or Services rejected or returned by the Contracting Body as described in clause 4.5.2 shall be returned to the Contractor at the Contractor's risk and expense.

5. CONTRACT PERFORMANCE

5.1.1 The Contractor shall perform its obligations under the Contract:-

a) with appropriately experienced, qualified and trained Employees with all due skill, care and diligence;

b) in a timely manner; and

c) in compliance with all applicable legislation, including but not limited to, any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.

5.1.2 The Contractor shall ensure that the Goods or Services conform in all respects with the Specification and are fit and sufficient for all the purposes for which such Goods or Services are ordinarily used and for any particular purpose made known to the Contractor by the Contracting Body.

6. PAYMENT AND CONTRACT PRICE

6.1 Contract Price

6.1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Contracting Body shall pay the Contract Price in accordance with clause 6.2.

6.1.2 The Contracting Body shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods or Services supplied in accordance with the Contract.

6.1.3 Payment shall, unless otherwise stated, be deemed to be inclusive of all costs, expenses and overheads of any kind incurred by the Contractor including delivery costs.

6.2 Payment and VAT

6.2.1 In consideration of the Contractor performing its obligations under the Contract, the Contracting Body shall pay all sums due to the Contractor in cleared funds within thirty (30) days of receipt of a valid invoice.

6.2.2 Invoices must legibly state:

a) the full name and address of the Contracting Body that ordered the Goods or Services together with the official order number;
b) the address of the Premises where the Goods or Services were delivered;
c) a full and proper description of the Goods or Services delivered at the price set out in the Pricing Schedule.
d) and such other requirements as set out in the Specification.

6.2.3 All payments will be made in sterling unless otherwise agreed by the Parties.

6.2.4 If the Contracting Body intends to withhold all or any part of a payment it must not later than 5 Working Days before the final date for payment give notice to the Contractor to that effect which notice must specify the amount proposed to be withheld and the ground for doing so.

6.3 **Recovery of Sums Due**

6.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Body in respect of any breach of the Contract), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Contracting Body.

6.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

6.3.3 The Contractor shall make any payments due to the Contracting Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Body to the Contractor.

7. STATUTORY OBLIGATIONS AND REGULATIONS

7.1 **Discrimination**

7.1.1 The Contractor shall not unlawfully discriminate in the supply of the Goods or Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, religion, belief or age and without prejudice to the generality of the foregoing shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Race Relations (Amendment) Act 2000, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998, the Employment Equality (Age) Regulations 2006 or other relevant legislation, or any statutory modification or re-enactment.

7.1.2 The Contractor shall at all times operate a policy of equal opportunity in both staffing and service delivery which accords with that of the Contracting Body. The Contractor will forward a copy of this policy to the Contracting Body when required to demonstrate its operation in the supply of the Goods or Services.

7.1.3 The Contractor shall take all reasonable steps to secure the observance of clause 7.1.1 by all servants, Employees or agents of the Contractor and all Contractors and sub-contractors employed in the execution of the Contract.

7.2 **The Contracts (Rights of Third Parties) Act 1999**

7.2.1 A person who is not a Party to the Contract shall not have any rights under or in connection with it.

7.3 **Sustainability**

7.3.1 The Parties are committed to the protection of the environment and to promote sustainable development, especially ways in which to eliminate waste, recycle and re-use.

7.3.2 The Contractor shall comply with the obligations regarding sustainability set out in the Specification.

7.4 **Health and Safety**

7.4.1 The Contractor shall comply with the requirements of the Specification and of the Health and Safety at Work etc Act 1974 and all other Acts, orders, regulations and codes of practice relating to health and safety which may apply to the performance of the Contract.

7.4.2 The Contractor shall promptly notify the Contracting Body of any health and safety hazards or any incident which causes personal injury or damage which may arise in connection with the performance of the Contract.

7.4.3 The Contractor shall make its health and safety policy statement available on request.

7.4.4 The Contracting Body shall be empowered to suspend the performance of the Contract in the event of non-compliance by the Contractor with its legal duties in health and safety. The Contractor shall not resume performance of the Contract until the Contracting Body is satisfied that the non-compliance has been rectified.

8. **CONTROL OF THE CONTRACT**

8.1 **Assignment and Sub-Letting**

8.1.1 The Contractor shall not transfer, assign or sub-let directly or indirectly to any person or persons any portion of this Contract without the previous permission of the Contracting Body.

8.1.2 Sub-letting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

8.1.3 The Contracting Body shall be entitled to assign the benefit of this Contract or any part of it and shall give written notice of any assignment to the Contractor.

8.2 **Waiver**

8.2.1 Failure by the Contracting Body or the Contractor to insist on strict performance of the Contract or to exercise any right or remedy upon breach of any provision of the Contract shall not constitute a waiver of the Contract conditions or a waiver of any subsequent breach or Default in the performance of the Contract.

8.2.2 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

8.3 **Variation**

8.3.1 Subject to the provisions of this clause 8.3, the Contracting Body may request a variation to Goods or Services ordered provided that such variation does not amount to a material change to the Order.

8.3.2 The Contracting Body may request a variation by giving sufficient information for the Contractor to assess the extent of the variation and any additional cost that may be incurred. The Contractor shall respond to a request for a variation within the time limits specified by the Contracting Body.

8.3.3 In the event that the Parties are unable to agree a change to the Contract Price, the Contracting Body may:-

a) agree to continue to perform their obligations under the Contract without the variation; or

b) terminate the Contract with immediate effect, except where the Contractor has already delivered part of all of the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed in clause 11.2.

8.3.4 If the Parties agree the variation, the Contractor shall carry out such variation and be bound by the same provisions so far as is applicable, as though such variation was stated in the Contract.

8.4 **Severability**

8.4.1 If any part of this Contract becomes invalid, illegal or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which gives effect to their original intentions.

8.5 **Remedies in the event of inadequate performance**

8.5.1 In the event that the Contracting Body is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Contracting Body may, without prejudice to its rights under clause 8, do any of the following:-

a) without terminating the Contract, itself supply or procure the supply of all or part of the Goods or Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Contracting Body that the Contractor will once more be able to supply all or such part of the Goods or Services in accordance with the Contract;

b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods or Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods or Services;

c) terminate, in accordance with clause 10 the whole of the Contract; and/or

d) charge the Contractor for, and the Contractor shall pay any costs reasonably incurred by, the Contracting Body (including any reasonable administration costs) in respect of the supply of any part of the Goods or Services by the Contracting Body or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Goods or Services and provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods or Services.

8.5.2 If the Contractor fails to supply any of the Goods or Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Contracting Body shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 (ten) Working Days of the Contracting Body's instructions or such other period of time as the Contracting Body may direct.

8.5.3 In the event that the Contractor:-

a) fails to comply with clause 8.5.2 above and the failure is materially adverse to the interests of the Contracting Body or prevents the Contracting Body from discharging a statutory duty; or

b) persistently fails to comply with clause 8.5.2 above;

the Contracting Body may terminate the Contract with immediate effect by giving the Contractor notice in writing.

8.5.4 Without prejudice to any other right or remedy which the Contracting Body may have, if any Goods or Services are not supplied in accordance with, or the Contractor fails to comply with any of the terms of, the Contract the Contracting Body shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods or Services have been accepted by the Contracting Body:-

a) to rescind the Order;

b) to reject the Goods or Services (in whole or in part) and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund for the Goods or Services so returned shall be paid forthwith by the Contractor;

c) at the Contracting Body's option to give the Contractor the opportunity at the Contractor's expense to either remedy any defect in the Goods or Services or to supply replacement Goods or Services;

d) to refuse to accept any further deliveries of the Goods or Services but without any liability to the Contracting Body; and

8.5.5 to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Contract.

9. LIABILITIES

9.1 Liability, Indemnity and Insurance

9.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-

a) death or personal injury caused by its negligence or that of its Employees;

b) fraud or fraudulent misrepresentation by it or its Employees; or

c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

9.1.2 Subject to clause 9.1.3 and clause 9.1.4 the Contractor shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Goods or Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Employees on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Body or by breach by the Contracting Body of its obligations under the Contract.

9.1.3 Subject always to clause 9.1.1 and clause 9.1.4, the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed £1,000,000 (one million pounds).

9.1.4 Subject to clause 9.1.1, in no event shall either Party be liable to the other for any loss of profits, loss of business, loss of revenue, loss of or damage to goodwill, loss of savings (whether anticipated or otherwise) and/or any indirect or consequential loss or damage.

9.1.5 The Contracting Body may, amongst other things, recover as a direct loss:

a) any additional operational and/or administrative expenses arising from the Contractor's Default ;
b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Body arising from the Contractor's Default (to include wasted staffing costs in the event of delayed delivery); and
c) the additional cost of procuring replacement Goods or Services following termination of the Contract as a result of a Default by the Contractor.

9.1.6 The Contractor shall effect and maintain the following insurances at its own expense for the duration of the Contract arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor:

a) a valid policy or policies of public liability insurance with a minimum level of indemnity of £5 million for any one claim;
b) a valid policy or policies or employer's liability insurance with a minimum level of indemnity of £10 million for any one claim in respect of all sums the Contractor is found legally liable to pay for injury, illness or disease suffered by an employee of the Contractor acting in course of his duties;
c) a valid policy or policies of product liability insurance with a minimum level of indemnity of £5 million for any one claim.

9.1.7 The Contractor shall give the Contracting Body, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

9.1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Contracting Body may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

9.1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

9.2 **Warranties and Representations**

9.2.1 The Contractor warrants and represents that:-

a) it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract and the Contract is executed by a duly authorised representative of the Contractor;
b) it will supply the Goods or Services using reasonable care, skill and diligence using suitably qualified personnel and in accordance with generally accepted industry standards and practice.
c) in entering the Contract it has not committed any fraud;

d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

e) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;

f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

10. DEFAULT, DISRUPTION AND TERMINATION

10.1 Termination

10.1.1 The Contracting Body may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a company and in respect of the Contractor:-

a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

b) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

c) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

d) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

e) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

f) the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the Contract. The Contracting Body may only exercise its right to terminate within six months after a change of control occurs.

10.1.2 The Contracting Body shall be entitled to terminate this Contract immediately and recover from the Contractor the amount of any loss resulting from such cancellation if, in relation to any agreement with the Contracting Body, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

10.1.3 The Contracting Body may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a material Default and if:

a) the Contractor has not remedied the Default to the satisfaction of the Contracting Body within ten (10) Working Days, or such other period as may be specified by the Contracting Body, after issue of a written notice specifying the Default and requesting it to be remedied; or

b) the Default is not, in the opinion of the Contracting Body, capable of remedy.

10.1.4 The Contracting Body shall have the right to terminate the Contract at any time by giving 30 days written notice to the Contractor.

10.1.5 The Contracting Body may terminate the Contract by giving written notice to the Contractor with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

10.2 **Consequences of Expiry or Termination**

10.2.1 Where the Contracting Body terminates the Contract under clause 10.1.3 and then makes other arrangements for the supply of Goods or Services, the Contracting Body may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Body throughout the remainder of the Contract Period. The Contracting Body shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated due to the Contractor's Default, no further payments shall be payable by the Contracting Body until the Contracting Body has established the final cost of making those other arrangements.

10.2.2 Subject to clause 10 where the Contracting Body terminates the Contract under clause 10.1.4, the Contracting Body shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available.

10.2.3 The Contracting Body shall not be liable under clause 10.5.2 to pay any sum which:-

a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period.

10.2.4 Save as otherwise expressly provided in the Contract, termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

10.3 **Disruption**

10.3.1 The Contractor shall immediately inform the Contracting Body of any actual or potential industrial action, whether such action be by its own Employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

10.3.2 In the event of industrial action by the Employees, the Contractor shall seek the Contracting Body's approval to its proposals for the continuance of the supply of the Goods or Services in accordance with its obligations under the Contract.

10.3.3 If the Contractor's proposals referred to in clause 10.3.2 are considered insufficient or unacceptable by the Contracting Body acting reasonably then the Contract may be terminated with immediate effect by the Contracting Body by notice in writing.

10.3.4 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Contracting Body, an appropriate allowance by way of extension of

time will be approved by the Contracting Body. In addition, the Contracting Body will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

10.4 **Recovery upon Termination**

10.4.1 On the termination of the Contract for any reason, the Contractor shall:

a) immediately deliver to the Contracting Body all property that may have been provided to the Contractor by the Contracting Body.

b) assist and co-operate with the Contracting Body to ensure an orderly transition of the provision of the Services to the replacement Contractor and/or the completion of any work in progress.

10.5 **Force Majeure**

10.5.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six Months, either Party may terminate the Contract with immediate effect by notice in writing.

10.5.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-Contractor or Contractor shall be regarded as due to Force Majeure only if that agent, sub-Contractor or Contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

10.5.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in clause 10.5.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

11. **DISPUTES AND LAW**

11.1 **Law and Jurisdiction**

11.1.1 This Contract shall be governed by and interpreted in accordance with English law and each Party agrees to submit to the exclusive jurisdiction of the English courts.

11.2 **Dispute Resolution**

11.2.1 It is the intention of the Parties to settle amicably by negotiation all disagreements and differences on matters relating to this Contract. Accordingly it is agreed that the procedures set out in this Clause shall be followed prior to the service of written notice terminating this Contract or in relation to any matter of dispute between the Parties.

11.2.2 In the event that any disagreement or difference of opinion arises out of this Contract the matter shall be dealt with as follows:

a) the Contracting Body's contracting officer and the Contractor representative shall meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either party convenes a meeting to resolve the matter or should they not be able to resolve the matter

within ten Working Days of the first meeting, the matter shall be promptly referred by either Party to the next level of management within the respective organisations for immediate resolution.

b) if within fourteen Working Days of the matter having been referred to the next level of management no agreement has been reached as to the matter in dispute, the Parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below.

11.3 An independent expert shall be appointed by agreement between the Parties. The Parties shall promptly furnish to such expert all information relating to the dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the Parties taking into account the respective rights and obligations of the Parties.

11.4 The decision of the expert shall be final and binding on the parties.

11.5 The Parties shall share equally the fees and expenses of the expert unless the expert directs otherwise.

11.6 In respect of all other disputes either Party may refer the matter for decision to arbitration whereupon the Parties shall comply with the following provisions:

11.6.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

11.6.2 the arbitration fees shall be met by the Contracting Body and Contractor in equal shares;

11.6.3 the decision of the arbitrator shall be binding on the Parties.

Appendix 2: User Agreement

(External bodies only)

Framework for the Supply and Delivery of Civil Engineering and Construction Materials, including Timber and Forestry Products

This form is available as a separate electronic document.
Please email: d.d.adams@dorsetcc.gov.uk

TO BE COMPLETED BY THE END USER ORGANISATION

Before conducting any activity under this framework, please complete this form and return it (by post, fax or email) to Dorset County Council *(return details below).*

USER AGREEMENT

I confirm that the End User Organisation detailed below wishes to access the above-mentioned Framework Agreement, and that in doing so the End User Organisation:

- will act in accordance with the guidance and instructions set out in this User Guide and in accordance with the Public Contracts Regulations 2006, as amended;
- will comply in all respects with the Framework Agreement and the Call-Off Contract terms and conditions, which it is deemed to accept in entering into this Agreement, and will not do anything that may put the Contracting Authority in breach of its obligations under the Framework Agreement.
- will inform the Council immediately if it becomes aware of any issue that may give rise to a breach of the Framework Agreement.
- accepts that it is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Contracting Authority is not responsible or accountable for the conduct of the End User Organisation in relation to the Framework Agreement or for the performance or non-performance of any Call-Off Contract between the End User Organisation and any framework provider.
- will indemnify, defend and hold harmless the Contracting Authority against all actions, claims, costs, expenses and damages arising from any claim by or against any framework provider pursuant to entering into a Call-Off Contract under the Framework Agreement.
- will co-operate with the Contracting Authority to provide all such information as may be required by the Contracting Authority to monitor a framework provider's performance under the Framework Agreement.

Definition: Contracting Authority means Dorset County Council on behalf of the Pro5 Group

I confirm I am authorised to enter into this Agreement on behalf of the User Organisation detailed below:-

Name of User Organisation:	
Address:	
Telephone:	
E-mail:	

Name:	
Position:	
Signature:	
Date:	
Contractor(s) of Interest (if all then state All)	
Lots:	☐ Lot 1 Civil Engineering and Construction Materials
	☐ Lot 2 Timber and Forestry Products

Return this form to:

Via Post: Dawn Adams, Dorset County Council, Dorset Procurement, Level 1 NE Wing, County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ

Or Via Fax: 01305 228567 **Or via Email to:** d.d.adams@dorsetcc.gov.uk

Dorset County Council

Dorset County Council Acknowledgement (To be completed by DCC)

Name:	
Position:	
Signature:	
Date:	

Appendix 3: Feedback Form

(External bodies only : internal users contact Dorset Procurement)

Framework for the Supply and Delivery of Civil Engineering and Construction Materials, including Timber and Forestry Products

This form is available as a separate electronic document.
Please email: d.d.adams@dorsetcc.gov.uk

Name of Contracting Body / End User Organisation			
Your Details (Name, Title, E-mail address etc)			
1	Name of Contractor engaged by your organisation		
2	Approximate value of business placed with the Contractor – per annum		
3	Method of procurement?	☐ Direct call off	
		☐ Further Competition	
4	If via Further Competition exercise, how many Contractors submitted a bid?		
5	Assessment of overall performance of the Contractor	☐ Excellent	☐ Adequate
		☐ Good	☐ Poor
6	Assessment of the Contractor performance	☐ Excellent	☐ Adequate
		☐ Good	☐ Poor
5	Assessment of Contractual Management performance	☐ Excellent	☐ Adequate
		☐ Good	☐ Poor
6	Quality of Contractor's communication, quotations etc	☐ Excellent	☐ Adequate
		☐ Good	☐ Poor
7	Any other feedback:		

Notes

Access to Framework – Other Contracting Bodies

Before conducting any activity under this Framework it is a requirement for potential Users to complete the User Agreement (Appendix 2 on pages 27 to 28) and return it to Dorset County Council.

User Guide

We have endeavoured to outline basic information within this User Guide however if further details are required or you have a query on any aspect of this agreement then please do contact the lead below.

Contact:

Dawn Adams, Senior Category Manager - Property
Email: d.d.adams@dorsetcc.gov.uk Tel: 01305 221271

Dorset County Council
Dorset Procurement, County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ